

### **REMARKS**

The Office Action mailed April 12, 2010 has been carefully considered. Reconsideration and allowance of the subject application, as amended, are respectfully requested.

The withdrawal, as a result of Applicants' Pre-Appeal Brief filed August 27, 2009, of the Finality of the preceding Final Office Action is noted, with thanks.

Claims 1-21 are currently pending, claims 22-24 having been previously cancelled. The independent claims (and various dependent claims) have been amended to clarify the claimed invention. No claims have been added or cancelled by this Amendment. It is believed that the changes that have been made to claims 7-13 render moot the Examiner's rejection of claims 7-13 under §101. Support for the within claim amendments may be found at, *inter alia*, page 6, lines 1 to 13, and page 15, line 11 to page 16, line 3 of the Specification.

In the Office Action, claims 1-21 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Cisco Systems, "High-Availability Solutions for SIP Enabled Voice-over-IP Networks", October 18, 2002, pages 1-7 (hereinafter, "Cisco Systems") in view of Rosenberg et al., Internet Engineering Task Force, Internet Draft, SIP WG, draft-ietf-sip-rfc2543bis-05.ps, October 26, 2001, pages 1-157 (hereinafter "Rosenberg"), or Lakkakorpi (U.S. Publication No. 2003/0179704). Applicants respectfully submit that this rejection is in error, and should be withdrawn.

All claim limitations must be considered material in judging the patentability of the claims against the prior art. MPEP §2143.03; *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976); *In re Wilson*, 424 F.2d 1382, 165 USPQ 494 (CCPA 1970). Anticipation of a claim under §102 requires that each limitation of the claim be identically disclosed in single unit of prior art. In determining the differences between the prior art and the claims, the question under 35 USC §103 is not whether the differences themselves would have been obvious, but whether the claimed combination of limitations, as a whole, would have been obvious. MPEP §2141.02; *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976). Rejections based on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with factual rationale to support a *prima facie* case of obviousness. In order for that reasoning and rationale to be proper, among other things, all of the claim limitations must be taught or

suggested in the art relied upon by the Examiner. MPEP §2141 III; *KSR International v. Teleflex Inc.*, 550 U.S. \_\_\_, 82 USPQ2d 1385 (2007).

At page 4 of the Office Action, the Examiner argues that Cisco discloses:

factoring the load into a session initiation protocol (SIP) value for the first node, where the value is an integer value based on both (1) a contact priority (Priority and Weight, In redundancy schemes, routes to a primary and secondary server are negotiated based on their designated priority) and (2) a number of calls or an amount of information being processed for a call; (Capacity; target peak-load capacity, commonly measured in calls per second, Priority and Weight; weighted random, which distributes requests proportional to the weight assigned to each route)

transmitting the value to a second node via one or more load brokers where each load broker is a back-to-back user agent; and (Load Balancers; Load balancers can be configured as 1+1 redundant)

(Office Action, page 4).

Cisco discloses a network that comprises SIP entities, and balancing calls among at least certain of those entities. However, contrary to the Examiner's above arguments, Cisco nowhere discloses or suggests **factoring the load** into **any kind** of **SIP** value, much less, a SIP Q-value. Additionally, Cisco nowhere discloses or suggests basing **any kind** of **SIP** value upon both (1) contact priority and (2) number of calls or an amount of information being processed for a call. Moreover, Cisco nowhere discloses or suggests transmitting **any kind of SIP value** via **any kind** of **load broker**, much less, where each such load broker is **a back-to-back user agent that is to operate as a proxy and to communicate regarding node locations in a SIP network**. As will be seen below, the independent claims, as amended, include these features, but these features of the claimed invention are nowhere to be found in any of the documents relied upon by the Examiner, including Cisco.

In the Office Action, the Examiner acknowledges that Cisco fails to disclose the use of a SIP Q-value. Office Action, page 4. However, the Examiner argues:

Rosenberg discloses SIP q-value and using the Q-value to determine call routing (Section 16.5, page 57; A common ordering mechanism is to use the qvalue parameter of destinations obtained from Contact header fields (see Section 22.10). Destinations are processed from highest qvalue to lowest. Destinations with equal qvalues may be processed in parallel; Section 26.1; qvalue = ( "0" [ "." 0\*3DIGIT ] )— ( "1" [ "." 0\*3("0") ] ); showing a q-value as an integer as recited in applicant's claim language; Section 10.2.1.2; page 35; If more than one Contact is sent in a REGISTER, then the registering UA intends to associate all of the URIs given in these Contact headers with the address of record present in the To field. This list can be prioritized with the "q" mechanism. q: The "q" parameter indicates a relative preference for the particular Contact header field compared to other bindings present in this REGISTER message or existing within the location service of the registrar. For an example of how a proxy server uses "q" values, see Section 16.5; Section 16.4 Making a Routing Decision; page 55; At this point, the proxy must decide where to forward the request.) (Office Action, pages 4-5).

Rosenberg suffers from the above deficiencies of Cisco vis-à-vis the claimed invention. For example, Rosenberg nowhere discloses or suggests **factoring the load** into **any kind** of **SIP** value, much less, a SIP Q-value. Rosenberg nowhere discloses or suggests basing **any kind** of **SIP** value (much less SIP Q-value) upon both (1) contact priority **and** (2) number of calls or an amount of information being processed for a call. Moreover, Rosenberg nowhere discloses or suggests transmitting **any kind of SIP value** via **any kind** of **load broker**, much less, where each such load broker is a **back-to-back user agent that is to operate as a proxy and to communicate regarding node locations in a SIP network**.

Lakkakorpi does not overcome these deficiencies of Cisco and Rosenberg. Even assuming, for the sake of argument, that the Examiner is correct in the Examiner's characterization of Lakkakorpi, no combination of Cisco, Rosenberg, and/or Lakkakorpi can be

said to disclose or suggest the specific features of the claimed invention. For example, independent claim 1, as amended, recites:

A method of communicating load, comprising:

determining a load on a first node;

**factoring the load into a session initiation protocol (SIP) Q-value for the first node, where the Q-value is an integer value based on both (1) a contact priority and (2) a number of calls or an amount of information being processed for a call;**

**transmitting the Q-value to a second node via one or more load brokers where each load broker is a back-to-back user agent that is to operate as a proxy and to communicate regarding node locations in a SIP network;** and

determining a domain load factor for a domain that comprises a plurality of SIP entities, the domain load factor indicating domain load for the entire domain, the domain load factor to be shared with other domains and to be used with the Q-value to determine call routing. (Claim 1, as amended).

All of the currently pending independent claims contain the above limitations of claim 1, or similar limitations, at least in part. Thus, all of the currently pending claims contain the above limitations of claim 1 or other similar limitations, at least in part, either directly, or by depending from one of the independent claims. 35 USC §112, fourth paragraph.

These differences between these documents used in the above rejections, and the claims, are not merely academic. For example, although the limitations in the claims are not limited to or bound by embodiments disclosed in the Specification, in an embodiment disclosed in the Specification, these features of the claimed invention that are not disclosed or suggested in these documents permit this embodiment to operate in a manner that is different from, and to achieve advantages compared to the technology disclosed in these documents. (See, e.g., Specification, page 6, lines 1 to 13, page 10, lines 14 to 22, and page 15, line 11 to page 16, line 3).

Accordingly, since these advantageous features of the claimed invention are nowhere disclosed or suggested in any of these documents, it is respectfully submitted that none of these documents, taken singly or in any combination, anticipates or renders obvious the claimed

**AMENDMENT**

Serial Number: 10/642,702

Filing Date: August 18, 2003

Title: DYNAMIC LOAD DISTRIBUTION WITHIN A SESSION INITIATION PROTOCOL NETWORK

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invention. Therefore, it is respectfully submitted that the Examiner's rejection of the claims, as amended, under 35 USC § 103 cannot be maintained, and should be withdrawn.

In the event that the Examiner believes that a telephone interview would advance the prosecution of this application, the Examiner is invited to call the undersigned attorney to initiate an interview.

In the event that any fees are due or payable in connection with this submission or in this application (including any applicable extension of time for response fees) please charge them to Deposit Account No. 50-4238. Likewise, please credit any overcharges to Deposit Account No. 50-4238.

Respectfully submitted,

**Customer Number: 76973**

Date: May 24, 2010

/Christopher K. Gagne, Reg. No. 36,142/  
Christopher K. Gagne  
Attorney For Assignee  
Reg. No. 36,142  
Telephone No. (817) 281-7131